

ISSUE DATE: February 23, 1996

DOCKET NO. P-999/CI-94-296

ORDER AFTER RECONSIDERATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs
Tom Burton
Marshall Johnson
Dee Knaak
Don Storm

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of an Investigation into the
Appropriate Local Calling Scope, in
Accordance with Minn. Stat. 237.161 (1994)

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PROCEDURAL HISTORY

I. Proceedings To Date

In 1994, the Legislature added a subdivision to Minn. Stat. § 237.161 which requires that the Minnesota Public Utilities Commission (the Commission) no longer accept petitions for extended area telephone service through June 1, 1996, but instead institute

...a proceeding or series of proceedings to investigate issues related to extended area telephone service and (the commission) shall issue a final order to establish, at a minimum, an orderly and equitable process and standards for determining the configurations of and cost allocations for extended area service in the state.
Minn. Stat. § 237.161, subd. 6 (1994).

In its Order of August 22, 1994, the Commission established the parameters of the case. In that Order, the Commission allowed any interested party to submit to the Commission by November 30, 1994, a plan for an appropriate local calling scope. The Commission stated that it would then issue a Notice by December 15, 1994, summarizing the plans that had been filed and any other plans that the Commission believed merited further consideration. Parties would have until March 1, 1995, to file responsive comments. Also, during the months of September and October, 1994, the Commission held a series of public forums around the State to explain the case and collect the views of the public.

In response to the Commission's August 22, 1994 Order, seven parties filed proposals for determining an appropriate local calling scope: AT&T, Frontier Communications of Minnesota (Frontier), GTE, the Minnesota Independent Coalition (MIC), the Minnesota Telephone Association (MTA), the Residential Utilities Division of the Office of the Attorney General (RUD-OAG), and US West Communications (USWC).

On June 9, 1995, the Minnesota Department of Public Service (the Department) filed a letter with the Commission on behalf of itself, AT&T, Frontier, GTE, MBUUC, MCI, the MIC, the

MTA, the RUD-OAG, Sprint/United and USWC. The parties reached a consensus recommendation which they filed for the Commission's consideration.

The "consensus position" was that the Commission should retain the extended area service (EAS) process as outlined in Minn. Stat. 237.161 with one exception: the calling standard should be increased from at least 50 percent of the subscribers making **one** or more calls per month to at least 50 percent of the subscribers making **four** or more calls per month. The parties agreed that the Commission should adopt, through the issuance of a final Order, this modified method on an interim basis pending the completion of the local competition rulemaking in Docket P-999/R-95-53. The parties stated that there were significant issues to be addressed concerning local calling scope and that the local competition rulemaking docket encompasses most, if not all, of these issues. The parties concluded, therefore, that it would be a more efficient use of resources to merge the local calling scope issues into the local service competition rulemaking. If, during the course of the rulemaking, the Commission determined that there was a local calling scope issue that should not be considered as a part of the local service rulemaking docket, the Commission could establish a separate proceeding for that issue at that time.

On July 18 and September 12, 1995, the Commission met to consider the consensus recommendation.

On October 24, 1995, the Commission issued its ORDER REACTIVATING THE PROCESSING OF EAS PETITIONS. In that Order, the Commission rejected the consensus recommendation and instead adopted on a final basis the process for EAS as established in Minn. Stat. § 237.161 (1994) with one exception: the traffic standard for petitions involving the Minneapolis/St. Paul metropolitan calling area would be raised to require that at least 50 percent of the subscribers in the petitioning exchange make 2 or more calls to the metro calling area. With regard to the issues that the consensus recommendation would have deferred to the local competition rulemaking docket, P-999/R-95-53, the Commission determined that if parties to the local calling scope docket believe that there are issues that need to be included in the local competition rulemaking docket, those parties can raise those issues in the rulemaking docket for consideration.

On November 3, 1995, AT&T filed a request for reconsideration with the Commission.

On November 13, 1995, MCI and MIC/Frontier filed requests for reconsideration of the Commission's October 24, 1995 Order.

On November 27, 1995, the Department filed its answer to the requests for reconsideration.

On January 30, 1996, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

II. Reconsideration

A. AT&T's Petition

In its request for reconsideration, AT&T urged the Commission to reconsider its rejection of the consensus recommendation for a four call threshold for petitioning exchanges. At a minimum, AT&T stated, the Commission should use a uniform statewide threshold regardless of the location of the petitioned exchange and raise the non-metro standard to two calls per month.

AT&T argued that a four call threshold is supported by the record evidence while a different threshold for metro/non-metro petitions is not. AT&T noted that the October 24 Order, which purported to be a final Order, invites parties to the local calling scope case to raise EAS issues in the local competition rulemaking docket. AT&T asserted that the concept of finality is substantially diluted by this suggestion.

2. MCI's Petition

MCI requested that the Commission adopt the consensus recommendation of the parties on reconsideration or, in the alternative, that the Commission adopt a uniform, statewide calling threshold for EAS of at least 50 percent of the subscribers making 2 or more calls per month to the petitioned exchange.

According to MCI, a uniform, statewide calling threshold of either 4, 3 or 2 would be supported by the record evidence in this proceeding but it noted that all of the original parties to this proceeding agreed to a four call threshold. MCI noted that the Minnesota Senior Federation-Iron Range Region (MSF-IRR) requested that the present system be changed so that low toll users are not subsidizing high toll users. Maintaining the current one-call threshold does not satisfy the MSF--IRR's concerns. While there is record evidence for raising the calling threshold to somewhere between two and eight calls, the Commission's one call non-metro and two call metro threshold is not supported by the record evidence.

MCI also requested that the Commission's plan be interim, with a final EAS plan developed within the context of the local competition rulemaking docket. If the parties are not satisfied that all of the issues have been resolved in the rulemaking docket, the parties could request that the unresolved issues be included in a proceeding to commence no later than February 1, 1998.

3. MIC/Frontier's Joint Petition

The Minnesota Independent Coalition (MIC) and Frontier Communications of Minnesota (Frontier) submitted a joint petition for reconsideration of the Commission's October 24, 1995 Order. The MIC/Frontier requested only one modification to the Commission's Order: that the calling criteria be increased from 50 percent of the customers making one or more calls to 50 percent making two or more calls for non-metro as well as for metro petitions. MIC/Frontier argued that the rationale for increasing the calling threshold from one to two is just as strong in the outstate area as in the metro area. Second, there is no record support for keeping a one-call

threshold in the outstate area or for having the threshold differ between the outstate and metro areas.

Clearly one goal of raising the calling threshold is to limit the instances in which an extensive and expensive EAS proceeding is initiated only to conclude with a rejection by the customers in the balloting process. Rejection of EAS occurs when the majority of those voting do not receive economic gain from replacing toll service with EAS. The current standard of 50 percent making one or more calls is too low to accurately reflect the economic value of EAS. The result has been a large number of petitions being processed only to be rejected in the polling. It is also important to note that all state agencies, IXC's and local exchange companies (LECs) participating in this proceeding supported the higher calling threshold.

The MIC/Frontier argued that raising the calling threshold will also reduce customer confusion and uncertainty. Many customers are confused by the current process which is time consuming, expensive and leads to a large number of failed petitions. The goal of reducing customer confusion and uncertainty is just as applicable in the outstate areas as in the metro area.

The MIC/Frontier also argued that it is illogical to apply different criteria depending on whether an area is large (metro) or small (outstate). The calling criteria has the same relationship to the called area whether the area is large or small. The outstate calling criteria should be increased from one to two.

4. The Department's Answer

In its answer to the AT&T, MCI and MIC/Frontier requests for reconsideration, the Department supported the request that the calling threshold be raised to a uniform two or more calls, and preferably to a calling threshold of four calls, to the petitioning exchange. According to the Department, the record evidence supports a calling threshold of up to four calls but does not support retaining a one-call threshold. The Department argued that there is also no record evidence to support using a different threshold for the metro area than for outstate Minnesota. The Department also indicated that a higher, uniform threshold better addresses the concerns expressed by the Senior Federation than does the October 24 Order, pending a final resolution of the issues.

The Department stated that it continues to believe that the local calling scope issues should be resolved in the local competition rulemaking. However, the Department indicated that it could support the alternative proposed by MCI, that the Commission indicate that its resolution in this docket be for a specified period of months, subject to change pending the completion of the local competition rulemaking docket. If all EAS issues are not decided in the rulemaking docket, parties could request that the unresolved issues be resolved in a proceeding to commence no later than February 1, 1998. The Department stated that this alternative would provide the parties a guarantee that their local calling scope issues will be heard by a date certain, even if they are not heard in the local competition rulemaking docket.

5. Commission Action

a. Calling Threshold

The Commission shares the parties' concern to seek a calling threshold requirement that eliminates petitions that, upon polling, are likely to lack adequate subscriber support. The ability to do so would save the time, energy, and expenses involved in such polling efforts. However, the Commission also continues to have a concern that adopting too high a calling threshold (such as a majority of subscribers in the petitioning exchange making 4 calls per month to the petitioned area, as suggested by the parties) may unfairly eliminate by regulatory fiat some petitions that, had they been allowed to go to ballot, would have proved to be adequately supported by the subscribers.

On reconsideration, the Commission agrees that a uniform calling threshold level statewide is appropriate. However, consistent with the statute and sound policy, the Commission will not quadruple that threshold, as advocated by the parties.¹ The companies' inclination to favor thresholds that maximally reduce the potential of successful EAS petitions is evident. However, the Commission finds that this inclination is not consistent with an even-handed interpretation and application of the EAS statute and would inappropriately substitute a regulatory determination for a vote of the affected subscribers.

Accordingly, the Commission concludes that it is appropriate to raise the calling threshold requirement **statewide** to at least fifty percent of the subscribers making 3 calls per month to the petitioned exchange. This decision is more squarely rooted in the record than the Commission's decision in the October 24, 1995 Order while still balancing the policy concerns underlying that Order.

b. Unresolved Local Calling Scope Issues

AT&T suggested that it is inappropriate for the Commission to consider the October 24, 1995 Order a final Order in this docket without dealing with all the local calling scope issues raised by the parties in this docket. AT&T misconstrued the responsibilities of the Commission in this regard. In any given docket, the Commission addresses all the issues that are important **and** ripe for decision. The fact that **some** local calling scope issues are not ripe for decision and have not been decided by the Commission at this time does not preclude the Commission from issuing a final order with respect to certain other issues. No dilution of the concept of finality of Orders has occurred.

To further clarify, the Commission's decision in this matter is final given the current environment, but that environment is likely to change with the introduction of local competition. Given the likely development of local competition, the Commission finds it appropriate, as requested by several parties, to address local calling scope issues (that are not specifically addressed in the local competition rulemaking docket) under the new environment in a

¹ The "consensus position" that the parties presented prior to the October 24, 1995 Order was that the calling threshold should be quadrupled, raised to 4 calls per subscriber per month to the petitioned exchange. In their petitions for reconsideration, the companies continued to favor the higher thresholds and, while acknowledging that the record supported thresholds as low as 2, asserted that the record also supported calling thresholds as high as 8.

proceeding to commence, at the request of parties, no later than February 1, 1998.

III. The Going-Forward EAS Process

The issue of whether portions of the old EAS rule (repealed Minn. Rules, Part 7815.0700-7815.1500) should be incorporated into the going forward EAS process was not explicitly addressed by parties in their petitions for reconsideration. However, in its review of the October 24, 1995 Order, the Commission noted the potential benefit of adopting certain provisions of the old EAS rule to guide the EAS process that is now recommencing.

Specifically, the Commission selected certain language (as modified) from the repealed Minn. Rules, Part 7815.0700-7815.1500. Parties were provided copies of the proposed language in advance of the January 30, 1996 meeting and given an opportunity to address the Commission in that regard. No party objected to the proposed language.

Having reviewed this matter thoroughly, the Commission finds that portions of the old EAS rule are necessary for the effective and efficient processing of EAS petitions under Minn. Stat. §237.161. Since the going forward EAS process substantially follows 237.161, the following portions of the repealed EAS rule should be included in the going forward EAS process:

Petition (Old Minn. Rules 7815.0700)

Customers that desire installation or removal of extended area service from an exchange shall file a petition with the commission ~~Department of Public Service~~. A copy shall be served on the telephone company that serves the exchange and on the telephone company that serves the exchange to which the installation or removal of extended area service is desired. The petition shall be on a form supplied by the commission ~~department~~. Blank forms shall be available from the commission ~~department~~ and in the offices of all telephone companies. The petition shall include:

- A. the name of the telephone company serving the petitioners' exchange;
- B. the name of the telephone company serving the exchange to which the installation or removal of extended area service is desired;
- C. the name of each exchange and the principal city in each exchange;
- D. the name, address, and telephone number of the person representing the petitioners to whom correspondence and the commission's order shall be sent;
- E. the name, address, and telephone number of each person signing the petition; and
- F. a statement that the signing customers desire to have extended area service either installed or removed from the named exchanges.

The petition shall be signed by 15 percent or more of the customers or 600 customers, whichever is less, in the petitioning exchange. There shall be one signature per billing number. In the case of a business customer, a duly authorized agent or representative must sign. The sponsor of the petition shall certify that the signatures on the petition are valid ~~and comply with parts 7815.0700 to 7815.1500~~. The petition shall be kept on file

and made available to the public at the department and in the local exchange office of the telephone companies. Anyone who wishes to challenge the validity of the signatures on the petition shall file a written protest, and shall identify the grounds therefor with the commission ~~department~~ within 30 days of service of the petition. Copies of the protest shall be sent to the petition sponsor and to the telephone companies. The commission and the telephone companies shall use customer billing records to check the validity of the signatures.

Traffic Study (Old Minn. Rules, 7815.0800)

The telephone company serving the petitioning exchange shall conduct a telephone traffic study between the exchanges for which the installation or removal of extended area service is proposed, unless other, equally reliable traffic study data is presently available. Centralized Message Data System (CMDS) data may be considered acceptable traffic study data. The traffic study shall be filed with the commission and the department within 45 days of the date of service of the petition. The commission shall grant an extension of time upon a finding that appropriate CMDS data, or other reliable data, is presently unavailable.²

Repetitioning (Old Minn. Rules 7815.1500)

The commission shall not order the removal of extended area service within five years of installation nor shall the commission consider a petition for installation of extended area service sooner than two years after denying a previous petition for installation of extended area service between the same two exchanges.

So that it is clear to all, therefore, the process for handling EAS petitions will be as set forth on **Attachment A** to this Order. Note that the only difference between Attachment A and the language set forth above is that the editorial marks and prior rule references have been deleted.

ORDER

1. The requests for reconsideration of the Commission's October 24, 1995 Order in this matter are granted in the following respects: 1) the calling threshold is raised statewide to at least 50 percent of the subscribers making 3 calls per month to the petitioning exchange; 2) local calling scope issues that are not specifically addressed in the local competition rulemaking docket will be addressed in a proceeding to commence, at the request of parties, no later than February 1, 1998.
2. The Commission hereby adopts portions of the language, modified as indicated above, from the repealed Minn. Rules, Part 7815.0700-7815.1500 as guidance for the going-

² In processing petitions under Minn. Stat. 237.161, the Commission has indicated a preference for 6 to 12 months of traffic data. This preference is continued under the language from the old EAS rule.

forward EAS process. The process for handling EAS petitions is set forth without editorial marks in **Attachment A**.

3. This Order shall take effect immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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ATTACHMENT A

Petition

Customers that desire installation or removal of extended area service from an exchange shall file a petition with the commission. A copy shall be served on the telephone company that serves the exchange and on the telephone company that serves the exchange to which the installation or removal of extended area service is desired. The petition shall be on a form supplied by the commission. Blank forms shall be available from the commission and in the offices of all telephone companies. The petition shall include:

- A. the name of the telephone company serving the petitioners' exchange;*
- B. the name of the telephone company serving the exchange to which the installation or removal of extended area service is desired;*
- C. the name of each exchange and the principal city in each exchange;*
- D. the name, address, and telephone number of the person representing the petitioners to whom correspondence and the commission's order shall be sent;*
- E. the name, address, and telephone number of each person signing the petition; and*
- F. a statement that the signing customers desire to have extended area service either installed or removed from the named exchanges.*

The petition shall be signed by 15 percent or more of the customers or 600 customers, whichever is less, in the petitioning exchange. There shall be one signature per billing number. In the case of a business customer, a duly authorized agent or representative must sign. The sponsor of the petition shall certify that the signatures on the petition are valid. The petition shall be kept on file and made available to the public at the department and in the local exchange office of the telephone companies. Anyone who wishes to challenge the validity of the signatures on the petition shall file a written protest, and shall identify the grounds therefor with the commission within 30 days of service of the petition. Copies of the protest shall be sent to the petition sponsor and to the telephone companies. The commission and the telephone companies shall use customer billing records to check the validity of the signatures.

Criteria

The commission shall grant a petition for installation of extended area service only when each of the following criteria has been met:

- 1) the petitioning exchange is contiguous to an exchange or local calling area to which extended area service is requested in the petition;*
- 2) polling by the commission shows that a majority of the customers responding to a poll in the petitioning exchange favor its installation, unless all parties and the commission agree that no polling is necessary; and*

3) at least 50 percent of the customers in the petitioning exchange make (two), (three) or (four) or more calls per month to the exchange or local calling area to which extended area service is requested, as determined by a traffic study.

The rate to the polled exchange must be available to its customers before the commission determines what proportion of them favor the installation of extended area service.

For the purpose of criterion 3), the commission shall include as a customer an FX telephone service subscriber in the petitioning exchange whose FX service is provided through the exchange or an exchange within the local calling area to which extended area service is sought. For the purposes of the EAS process, "FX" means tariffed telephone toll service provided by placing a telephone line from another telephone exchange area in the telephone customer's exchange area.

When the local calling area to which extended service is sought is the metropolitan local calling area in Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington counties and the petitioning exchange meets the criteria, the telephone company serving the petitioning exchange shall make local measured service or another lower cost alternative to basic flat rate service available to customers in the petitioning exchange.

Traffic Study

The telephone company serving the petitioning exchange shall conduct a telephone traffic study between the exchanges for which the installation or removal of extended area service is proposed, unless other, equally reliable traffic study data is presently available. Centralized Message Data System (CMDS) data may be considered acceptable traffic study data. The traffic study shall be filed with the commission and the department within 45 days of the date of service of the petition. The commission shall grant an extension of time upon a finding that appropriate CMDS data, or other reliable data, is presently unavailable.

Basis of Rates; Costs.

For a proposal to install extended area service, proposed rates must be based on specific additional cost incurred, operating expenses, actual cost for new facilities constructed specifically to provide for extended area service, net book value of existing facilities transferred from another service to extended area service, a return on the capital investment associated with installing and providing the extended area service, and appropriate contributions to common overheads.

Rates

When the local calling area to which extended service is sought is the metropolitan local calling area in Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington counties, 75 percent of the costs of providing extended area service must be apportioned to the petitioning exchange and the remaining 25 percent apportioned to the exchange or exchanges to which extended area service is requested. When the proposed extended service area is not the metropolitan local calling area, the commission shall determine the apportionment of costs,

provided that between 50 and 75 percent of the costs must be allocated to the petitioning exchange. The costs must be apportioned among the customers in an exchange so that the relationship between the rates for classes of basic local service remains the same. Rates within the existing metropolitan local calling area may not be raised as a result of the addition of a local exchange under this subdivision until the rates in the added exchange are at least equal to the highest rates in an adjacent exchange within the metropolitan local calling area, provided that the rates in the added exchange may not exceed the amount necessary to recover 100 percent of the costs and ensure that the rates are income neutral for the telephone company serving the added exchange.

The commission shall establish rates that are income neutral for each affected telephone company at the time at which the commission determines the extended area service rates. The commission shall consider the interests of all parties when determining a fair and equitable extended area service rate for a local telephone exchange that is newly included in the extended area service.

A telephone company that provides local telephone service in an exchange that is included in an extended service area shall include the extended area service rate in the basic rate for the purpose of billing customers so that only one line item charge appears on customers' bills for both rates.

LATA Boundaries

When the Commission has determined that a petition for inclusion of a local exchange in an extended service area should be granted under this section, but the inclusion of that local exchange would place a telephone company in violation of the federal prohibition on providing telephone service across a local access and transport area (LATA) line, as defined in section 237.57, subdivision 5, the commission shall order the affected telephone company to seek a waiver of the prohibition on the provision of service across the LATA line to the extent necessary to include the exchange in the extended service area.

Interstate Extended Area Service

No state boundary may be crossed to establish extended area service under this section, but an exchange may be added to an interstate extended service area in existence on April 27, 1990.

Repetitioning

The commission shall not order the removal of extended area service within five years of installation nor shall the commission consider a petition for installation of extended area service sooner than two years after denying a previous petition for installation of extended area service between the same two exchanges.